IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 268 OF 1994

Shri Vijay Dinkarrao Karanjavane
Age-34 years, Occupation-Builders
Residing at 328, Nana Peth,
Pune-2 .. Petitioner
(Org.Applicant)

Vs.

Shri Rajeev V. Arora
age - 34 years, Occupation-Business
Residing at 328, Nana Peth,
Pune - 2. .. Respondent
(Org.Opponent)

Mr. Vilas Tapkir for Petitioner.
None for the Respondent.

CORAM: B.H. MARLAPALLE, J.

Date : July 19, 2005.

ORAL JUDGMENT:-

1. This revision application is by the landlord being aggrieved by the order dated 17/12/1993 dismissing Application No.21 of 1993 filed under Section 13A2 of the Bombay Rent Act for eviction of the tenant.

2. As per the petitioner he is the owner of House

No. 328, Nana Peth, Pune and from the same house one room on the ground floor bearing No.2 and admeasuring 10 ft. x 10 ft. was given for the occupation of the respondent on 31/8/1992 and an agreement for license came to be signed on the same day for a period of 11 months starting from 1/9/1992. The license fee was fixed at Rs.50/- per month. The license was to expire on 31/7/1993 and the landlord ought to have received the vacant and peaceful possession of the suit premises on 1/8/1993. As the respondent did not hand over the possession of the suit premises to the petitioner, he approached the competent authority at Pune by filing an application under Section 13A2 of the Bombay Rent Act. The petitioner landlord examined himself and the licensee also stepped into the witness box before the competent authority. The licence agreement (Exh.20) was also placed on record. In his depositions the licensee denied that he had signed on this document at Exh.20. The competent authority held that the decision in the case of P.C. Purushothama Reddiar vs. S. Perumal reported in AIR 1972 SC 608 was not applicable to the instant case and there was absolutely no evidence on record to show that the

petitioner had executed any agreement of leave and licence in favour of the opponent. The competent authority, therefore, held that the petitioner landlord failed to prove that the opponent was inducted as licensee in the suit premises and, therefore, the competent authority had no jurisdiction to entertain the said application. It further held that the petitioner failed to prove that the suit premises were given to the opponent for the purpose of his residence only.

3. Thus the crucial issue before the competent authority was regarding the relationship of licensor and licensee as the opponent had contended that he was not a licensee and, in fact, he was a tenant. The opponent contended that his father was the tenant in the suit premises on payment of deposit of Rs.30,000/-. However, as noted by the competent authority there was no proof placed on record to support the said contention except the mere words.

4. During the pendency of this revision application, a motion was moved by the landlord for

the verification of the opponent's signature by a Hand Writing Expert. The Chief State Examination of documents, CID, Maharashtra State, Pune in his written opinion dated 5/5/1997 has intimated that the signature of the opponent as shown on the agreement at Exh.20 tallies and the same is his signature. Initially Mr. Surana had appeared for the opponent but the application was dismissed in default on 23/1/2003. It came to be restored by the order dated 24/3/2004 passed in Civil Application No.59 of 2003. Vakil Patra on behalf of the opponent was filed by Mr.Surana on 31/3/2004 consequent to the newspaper publication by way of notice to the opponent by the present petitioner.

5. The competent authority fell in gross errors, at the first instance, by discarding the agreement at at Exh.20, solely by accepting statement of the opponent that he had not signed the same when the said document was already exhibited. The petitioner had rightly placed reliance on the decision in the case of P.C. Purushothama Reddiar (Supra) wherein it has been held, inter alia, that it is not open to the party to

object to the admissibility of the documents which are marked as exhibits without any objection from such party. The court further held that once a document is properly admitted, the contents of that document are also admitted in evidence though that document may not be conclusive evidence. Once the landlord had placed on record copy of the agreement at Exh.20 and if it was the contention of the opponent that such an agreement did not exist as he had not signed the same, the burden shifted on him to disprove the said agreement.

6. The agreement at Exh.20 clearly stated that,

(a) The suit premises were handed over to the opponent purely on temporary basis for the period of 11 months and only for his occupation on a monthly license fee of Rs.50/-.

(b) The license period from 1/9/1992 to 31/7/1993.

(c) The occupant will not claim the tenancy rights and would not hand over the suit premises to any other person or persons as licensees during the period of 11 months.

6A. The agreement did not contemplate that the licensee was required to pay any taxes in respect of the suit premises and it clearly stipulated that the premises were taken by the opponent as a licensee. The landlord in his depositions had proved the contents of the said agreement before the competent authority. The dispute regarding the signature of the opponent on the said document has also been now settled in view of the Hand Writing Expert’s opinion and, therefore, the contents of the said document will have to be taken into consideration to decide the real intentions of the parties. A reasonable scope of the document clearly shows that it was an agreement for licence and it was not the lease agreement. Immediately on expiry of the period of 11 months of the license, the landlord approached the competent authority and filed the application under Section 13A2 on or about 2/8/1993, as is cleared from the record

and proceeding. The parties were governed by the said agreement at Exh.20 and does not leave any other scope but to show that it was an agreement for leave and license. In the premises, the view taken by the competent authority in the impugned order is indefensible and, therefore, revision application would succeed.

7. Hence, the revision application is allowed and impugned order dated 17/12/1993 passed in Application No.21 of 1993 is hereby quashed and set aside. The said application stands allowed and the respondent-opponent shall hand over the vacant and peaceful possession of the suit premises/room to the petitioner within a period of one month from today. Rule made absolute accordingly with no order as to costs.

(B.H. Marlapalle,J.)